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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,483	09/24/2003	Susanne Knop	2002DE135	3975
25255	7590	10/05/2005	EXAMINER	
CLARIANT CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 4000 MONROE ROAD CHARLOTTE, NC 28205			SZEKELY, PETER A	
			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/669,483

Applicant(s)

KNOP ET AL.

Examiner

Peter Szekely

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 September 2003.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-13 and 15-21 is/are rejected.  
7) ☒ Claim(s) 14 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/17/04, 3/24/04, 5/25/05  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: In paragraph 0038 melamine polyphosphate is characterized as an inorganic compound. Melamine polyphosphate is an organic compound.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 10 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In claim 10 phosphoric acid is characterizes as an organic compound and in claim 13 melamine polyphosphate is characterized as an inorganic compound. The opposite of these characterizations is true. Correction is required.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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6. Tetraphenyl resorcinoldiphosphate is misspelled in the claim 10. Claim 15 contains improper Markush language.

7. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: Thermosetting resins.

***Claim Objections***

8. Claim 15 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The intended use does not further limit a composition.

***Double Patenting***

9. Claims 1-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,420,459. Although the conflicting claims are not identical, they are not patentably distinct from each other because melamine phosphate, melamine diphosphate and guanidine phosphate qualify as phosphorus compounds.

10. Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 10/669,973. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application is a special case of the instant application.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-9, 11-13 and 15-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Horold 6,420,459.

13. Horold discloses thermosetting resin, salts of phosphinic acid and phosphorus-nitrogen compounds in claim 1, substitutions in claims 2-7, phosphinic salt concentrations in claim 8, phosphorus containing organic compounds in claim 11, their concentrations in claim 12, ammonium polyphosphate in claims 13-14, articles in claims 15-16 and the claimed process in claims 17-19. Since the certified English Translation of the priority document has not been submitted, the effective filing date of the instant application is 9/24/03. Applicants' claims are not novel.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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15. Claims 1-9, 11-13 and 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horold 6,420,459.

16. The reference has been discussed already. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to select the phosphorus containing flame-retardants from a list of equivalents.

***Allowable Subject Matter***

17. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

18. Claim 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (571) 272-1124. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peter Szekely  
Primary Examiner  
Art Unit 1714

P.S.  
9/8/05